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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EUGENE DIVISION

KIM BRETHAUER,

Case No. CV 11-6233-AA

Plaintiff,

v.

**COMPLAINT—VIOLATION OF 42
U.S.C. 1983**

**LINCOLN COUNTY, and
RAND OVERTON, an individual,**

(Jury Trial Requested)

Defendants.

JURISDICTION

1.

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and brought pursuant to a claim under 42 U.S.C. 1983. Plaintiff requests a jury trial in this matter.

VENUE

2.

Venue is appropriate in this Court under 28 U.S.C. § 1391 because the events giving rise to this complaint occurred in Lincoln County, Oregon.

3.

Plaintiff is a resident of Lincoln County, Oregon.

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4.

At all material times, Defendant, Lincoln County, was a public body responsible under state law for the acts and omissions of its employees, including those whose conduct is at issue herein.

5.

Defendant, Rand Overton ("Overton"), is a resident of Lincoln County. At all times relevant to this complaint, Overton was a deputy district attorney operating under color of law within the course and scope of his employment.

FACTUAL ALLEGATIONS

6.

Plaintiff met Defendant Overton when he was prosecuting a case in which she was a victim of domestic violence between 1998 and 2001. As such, he was in a position of apparent authority over Plaintiff.

7.

Plaintiff interacted with Overton again regarding a friend she was helping that was going through a domestic violence issue in 2006 that was being prosecuted by Lincoln County. Plaintiff went to the location of the grand jury to provide support for this friend. Plaintiff spoke to Overton and made it clear to him that she was in a healthy relationship with a man.

8.

After this discussion, Overton began emailing Plaintiff from his work computer during work hours. These emails began having sexual connotations.

9.

This conduct was unwanted. Plaintiff did not know how to respond to Mr. Overton, a person in apparent authority, acting in this manner. Plaintiff was scared and did her best not to

communicate with Overton and ignore his emails. Overton was persistent in his efforts to pursue Plaintiff.

10.

Overton told Plaintiff on numerous occasions he was going to come by her work. He also called her and requested to come by her home. This conduct was unwanted. During this process, Overton continued to engage in inappropriate sexual banter directed at Plaintiff.

11.

Overton then interacted with Plaintiff again regarding a domestic violence matter regarding another friend of hers. During these communications, Overton regularly engaged in official conversation regarding the matter followed by sexually charged banter. This caused Plaintiff severe emotional distress. These communications continued to occur on a Lincoln County computer during regular work hours. On two occasions, Overton sent via Lincoln County email a picture of his penis that he had taken at his desk in his office chair to Plaintiff. He requested similarly revealing pictures from Plaintiff. Plaintiff was offended by these pictures and declined to provide pictures to Overton. These email communications were severe and pervasive and continued until October 2009.

12.

Overton was convicted of official misconduct in part due to his treatment of Plaintiff.

FIRST CLAIM AGAINST OVERTON—VIOLATION OF 42 U.S.C. 1983

13.

Plaintiff realleges Paragraphs 1-12. 42 U.S.C. § 1983 provides that a party shall be liable when it Asubjects, or causes to be subjected, any person of the United States . . . deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States.

14.

At all times material to this complaint, Overton acted or purported to act in the performance of official duties under state, county, or municipal law, ordinances or regulations.

15.

Defendant subjected Plaintiff to repeated unwelcome communications of a sexual nature, as alleged above, in violation of Plaintiff's constitutional rights under the Fourth and Fourteenth Amendments to be secure in her person, her right of privacy, right to be free from unreasonable searches and seizures, right to be free from involuntary servitude, her right to due process of law, before being deprived her liberty, her right to equal protection under the laws, and her right to be secure in her person.

16.

Overton subjected Plaintiff to persistent, unwanted, communications of a sexual nature in violation of Plaintiff's constitutional rights.

17.

Overton acting under color of law, in an individual capacity, misused his official powers with a conscious disregard for Plaintiffs' constitutional rights. In addition, or in the alternative, his conduct was wanton, reckless, and in disregard of plaintiff's well-established constitutional rights, and he knew or reasonably should have known that his conduct was below the standard prescribed by law herein. Overton's conduct was well defined by law and he knew or reasonably should have known that his conduct was below the standard prescribed by law herein.

18.

Overton acted in a discriminatory manner towards Plaintiff by sexually harassing Plaintiff because she is a female. Overton, in acting to deprive Plaintiff of her rights, went far

beyond actions reasonably necessary for the discharge of his duties and within the course and scope of his employment, and instead misused his official powers with a willful and malicious intent to deprive Plaintiff of her civil rights and cause her grievous injuries thereby. Overton, in acting to deprive Plaintiff of her rights, acted intentionally, knowingly, willfully, and with gross disregard to Plaintiff's rights. Overton's sexual harassment toward Plaintiff, as a female, as alleged in the above mentioned paragraphs, constitutes a violation of 42 U.S.C. § 1983 for which Plaintiff is entitled to relief. The violations of 42 U.S.C. § 1983 by Overton resulted in Plaintiff being deprived of her rights, privileges, or immunities secured by the Constitution and laws of the United States.

19.

As a direct and proximate cause of Overton's violation of Plaintiff's constitutional rights, Plaintiff has suffered economic and non-economic damages in an amount to be determined at trial. Plaintiff seeks recovery of all equitable relief, compensatory damages, and punitive damages provided by law, in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

20.

Overton intentionally violated Plaintiff's constitutional rights and demonstrated a wanton, reckless or callous indifference to the constitutional rights of Plaintiff warranting an imposition of punitive damages in such amount as the jury may deem appropriate to punish Overton for his wanton misconduct and to deter Lincoln County District Attorneys from callously disregarding citizens' constitutional rights.

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SECOND CLAIM AGAINST LINCOLN COUNTY-- VIOLATION OF 42 U.S.C. 1983

21.

Plaintiff realleges paragraphs 1-20. Plaintiff has constitutional rights under the Fourth and Fourteenth Amendments to be secure in her person, her right of privacy, right to be free from unreasonable searches and seizures, right to be free from involuntary servitude, her right to due process of law, before being deprived her liberty, her right to equal protection under the laws, and her right to be secure in her person.. 42 U.S.C. § 1983 provides that a party shall be liable when it “subjects, or causes to be subjected, any person of the United States ... deprivation of any rights privileges, or immunities secured by the Constitution and law of the United States.”

22.

The deprivations of constitutional rights set forth in the paragraphs above, were caused by the Lincoln County’s employees, while acting under color of law, in the following manner:

- A. In having a policy and/or custom and practice of permitting county employees to use the county email system to send personal emails;
- B. In having a policy and/or custom and practice of failing to monitor email communications of county employees;
- C. In having a policy and/or custom and practice of failing to supervise district attorneys in the discharge of their official duties;
- D. In having a policy and/or custom and practice of permitting employees to have personal telephonic communications on county equipment during the discharge of their duties; and
- E. In failing to properly train and instruct district attorneys.

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23.

Defendant Lincoln County's employees' conduct was well defined by law and Defendant knew or reasonably should have known that their conduct was below the standard prescribed by law herein.

24.

At least in part, one or more of the policies, customs, official practices, and acts of the Lincoln County's employees', and their respective officials, described above or that may be discovered, was a cause of Plaintiff's injuries.

25.

Lincoln County's employees' actions towards Plaintiff, as alleged in the above mentioned paragraphs, constitute a violation of 42 U.S.C. § 1983 for which Plaintiffs are entitled to relief. The violations of 42 U.S.C. § 1983 by Lincoln County resulted in Plaintiff being deprived of her rights, privileges, or immunities secured by the Constitution and laws of the United States.

26.

As a direct and proximate cause of Lincoln County's employees' violation of Plaintiff's Fourth and Fourteenth Amendment rights, Plaintiff has suffered economic and non-economic damages in an amount to be determined at trial. Plaintiff seeks recovery of all equitable relief, compensatory damages, and punitive damages provided by law, in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

27.

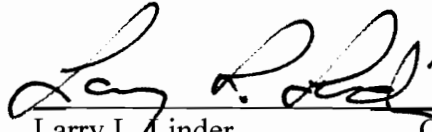
Lincoln County's employees' conduct toward Plaintiff demonstrated a wanton, reckless or callous indifference to the constitutional rights of Plaintiff warranting an imposition of punitive damages in such amount as the jury may deem appropriate to punish Lincoln County for

its wanton misconduct and to deter Lincoln County employees from callously disregarding citizens' constitutional rights.

WHEREFORE, Plaintiff prays for judgment against Defendants in the following manner:

1. For Plaintiff's First Claim For Relief Against Overton: Economic and non-economic damages in an amount to be determined at trial. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;
2. For Plaintiff's Second Claim For Relief Against Lincoln County: Economic and non-economic damages in an amount to be determined at trial. Plaintiff seeks recovery of all compensatory and punitive damages provided by law in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;

DATED this 19th day of July, 2011.


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